***UNITED STATES DISTRICT COURT***

***DISTRICT OF MAINE***

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| ***AUBURN POLICE UNION, et al.,*** | ) | |
| | ) | |
| ***Plaintiffs*** | ) | |
| | ) | |
| ***v.*** | ) | ***Civil No. 91-0292-P-H*** |
| | ) | |
| ***MICHAEL E. CARPENTER, as Attorney General of the State of Maine,*** | ) | |
| | ) | |
| ***Defendant*** | ) | |

## ***RECOMMENDED DECISION ON CROSS-MOTIONS FOR JUDGMENT ON THE BASIS OF A STIPULATED RECORD***

On February 7, 1991 this court struck down as unconstitutional section 3702 of the version of the Solicitation by Law Enforcement Officers Act (``Act'') then in effect, 25 M.R.S.A. ' ' 3701-06 (1988), on facial overbreadth, prior restraint and equal protection grounds. *Auburn Police Union v. Tierney*, 756 F. Supp. 610 (D. Me. 1991) (``*Auburn Police I*''). Following that ruling the Maine Legislature repealed some exceptions to the Act and enacted a modified version of the law restricting solicitation by and on behalf of law-enforcement personnel.

In this lawsuit challenging the constitutionality of section 3702-A of the amended Act, 25 M.R.S.A. ' ' 3701-03, the plaintiffs and defendant Michael E. Carpenter, attorney general of the state of Maine (``State'' or ``defendant''), seek judgment on the basis of a stipulated written record. This procedural device allows a court to resolve any lingering issues of material fact in reaching its decision on the merits. *Boston Five Cents Sav. Bank v. Secretary of the Dep't of Hous. & Urban Dev.*, 768 F.2d 5, 11-12 (1st Cir. 1985).

The record reveals that in the aftermath of *Auburn Police I* the essential facts have not changed. The plaintiff police unions and police officers[1] want to solicit, and since *Auburn Police I* have solicited, advertising from the general public for inclusion in publications, Stipulated Facts && 24-28; plaintiff Charles Underwood wishes to advertise in and receive copies of police publications, *id.* & 13; and plaintiff R.H. McKnight Co., Inc. d/b/a Brent-Wyatt East, a professional fundraiser and publisher, seeks to solicit, and since *Auburn Police I* has solicited, advertisements for publications on behalf of the plaintiff unions and officers, *id.* && 14, 21, 25. The new Act effectively bars all of the plaintiffs' activities listed above by virtue of its prohibition against solicitation of property from the general public ``when the property or any part of that property in any way *tangibly* benefits, is intended to *tangibly* benefit or is represented to be for the *tangible* benefit of any law enforcement officer, law enforcement agency or law enforcement association. . . ." 25 M.R.S.A. ' 3702-A (emphasis added). Section 3702-A of the amended Act is substantively identical to section 3702 of the prior version except for the addition of the modifiers ``tangible" and ``tangibly."[2] However, in addition to

[1] Union plaintiffs are the Auburn Police Union, Stipulated Facts & 7, the Portland Police Benevolent Association, *id.* & 8, and the Lewiston Police Union (a/k/a Local 545, International Brotherhood of Police Officers), *id.* & 9. All are Maine not-for-profit corporations. *Id.* && 7-9. Police-officer plaintiffs are Leonard Dexter, vice president of the Portland Police Benevolent Association, *id.* & 10, Kevin MacDonald, secretary of the Portland Police Benevolent Association, *id.* & 11, and David B. Chamberlain, secretary of the Lewiston Police Union, *id.* & 12.

[2] Proposed rules drafted by the defendant define the italicized terms as follows:

> 109.1 SOLICITATIONS THAT TANGIBLY BENEFIT LAW ENFORCEMENT
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> A solicitation tangibly benefits a law enforcement agency, officer, or association if the proceeds of that solicitation are used, represented to be used, or intended to be used to support a law enforcement program or purpose which a law enforcement agency or association otherwise would have to fund through its own budgeting mechanisms. Examples

replacing section 3702 with section 3702-A, the Legislature repealed, or let expire on their own terms, exceptions to the old law which exempted certain activities of the Department of the Attorney General, 25 M.R.S.A. ' 3706 (repealed), and state warden service associations, 25 M.R.S.A. ' 3702 (repealed), exempted the sale by non-law-enforcement officers of advertising space in promotional and educational publications of the Department of Inland Fisheries and Wildlife, 25 M.R.S.A. ' 3705 (repealed), and exempted solicitation for a memorial to slain police officers, Priv. & Spec. Laws 1989

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> of solicitations which tangibly benefit law enforcement are as follows: (1) A solicitation which raises money from community members to pay for the purchase of equipment for a local police department; (2) A solicitation to send an officer into school classrooms to conduct anti-drug abuse training (the money paying for the officer's salary and for education materials); and (3) The solicitation of funds for erection of a monument to memorialize slain officers . . . .
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> 109.2 SOLICITATIONS THAT DO NOT TANGIBLY BENEFIT LAW ENFORCEMENT
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> A solicitation of money for purposes completely unrelated to law enforcement, such as for a charity unrelated to law enforcement, does not confer a tangible benefit on law enforcement even if the solicitation effort increases good will toward law enforcement. For example, if police officers engage in solicitations of money for earthquake victims in South America, and if no law enforcement agency, officer, or association receives, is intended to receive, or is represented to receive any of the proceeds of the solicitation, then that solicitation program will <u>not</u> tangibly benefit law enforcement.

Appendix B (ch. 109: Rules Concerning Unfair Trade Practices and Charitable Solicitations by Law Enforcement Officers) to Defendant Attorney General Michael E. Carpenter's Memorandum in Support of His Request for Judgment on the Stipulated Record.

Besides the addition of these qualifying modifiers, section 3702-A differs from repealed section 3702 only in the respect that it does not contain the so-called ``wardens exception" which, in any event, was effectively neutralized by the Supreme Judicial Court of Maine in *State v. Maine State Troopers Ass'n*, 491 A.2d 538 (Me.), *appeal dismissed*, 474 U.S. 802 (1985).

ch. 47 and Priv. & Spec. Laws 1990 ch. 114 (expired). Violation of section 3702-A is punishable as an unfair-trade practice. 25 M.R.S.A. ' 3702-A.

As in *Auburn Police I*, the plaintiffs charge that the State, in violation of 42 U.S.C. ' 1983, has deprived them of rights secured under the United States Constitution. Specifically, they contend that section 3702-A violates the First and Fourteenth Amendments in that it is unconstitutionally overbroad, serves as an unconstitutional prior restraint on their freedom of speech and denies them equal protection of the laws.[3] On these grounds they seek, pursuant to 28 U.S.C. ' 2201, a declaratory judgment that section 3702-A is unconstitutional, as well as preliminary and permanent injunctions against enforcement of section 3702-A and recovery of attorney fees and costs pursuant to 42 U.S.C. ' 1988.

For the reasons spelled out below, I recommend that the court grant the plaintiffs' motion and deny the defendant's motion. Section 3702-A suffers from the same constitutional infirmities that led to the demise of repealed section 3702. Accordingly, I recommend that this court permanently enjoin enforcement of section 3702-A and award the plaintiffs attorney fees and costs pursuant to 42 U.S.C. ' 1988.

## I. EFFECT OF PRECEDENT

Both parties assert that decisions resolving challenges to prior versions of the Act are binding on the court in this case. In 1985 the Supreme Court summarily dismissed an appeal from a Maine

[3] Although the Act applies to all law-enforcement agencies, officers and associations, 25 M.R.S.A. ' 3702-A, the plaintiffs base their legal claims on its impact upon non-profit, or charitable, law-enforcement associations.

Supreme Judicial Court (``Law Court") decision rejecting constitutional challenges to the Act. *State v. Maine State Troopers Ass'n*, 491 A.2d 538 (Me.), *appeal dismissed*, 474 U.S. 802 (1985) (``*MSTA*"). However, in *Auburn Police I* this court held that the substantive issues in that case fundamentally diverged from those in *MSTA* thereby undermining ``the binding force of the Supreme Court's summary dismissal and of the Law Court's own conclusions." *Auburn Police I*, 756 F. Supp. at 616. The State urges that, because it has since repealed exceptions to the Act, some of which were enacted after the Supreme Court's summary dismissal of the *MSTA* appeal and rendered repealed section 3702 constitutionally defective, *MSTA* is now once again binding upon the court. Defendant Attorney General Michael E. Carpenter's Memorandum in Support of His Request For Judgment on the Stipulated Record (``Defendant's Memorandum") at 13-15. The plaintiffs respond that repeal of the exceptions has no effect and that the court's prior decision in *Auburn Police I*, not *MSTA*, is controlling. Plaintiffs' Reply to Defendant's Memorandum in Support of His Request for Judgment on the Stipulated Record at 6-10.

The court in *Auburn Police I* held that the premise on which the Law Court relied in deciding *MSTA* was no longer valid and that therefore the Supreme Court's summary dismissal ceased to be binding. *Auburn Police I*, 756 F. Supp. at 616. Once it ceased to be binding, it ceased to be binding for all time. Just as the proverbial egg cannot be unscrambled, neither can the Act's post-*MSTA* legislative history be ignored.[4] In any event, the court has before it a challenge to the constitutionality of a new statutory scheme, albeit one which addresses the same general issue of solicitation by and on behalf of law-enforcement personnel that was presented in *MSTA*. *MSTA* is not a precedential bar to the court's consideration of this new challenge. Nor is *Auburn Police I a fortiori* determinative of the

[4] There is no indication in *MSTA* that the Law Court considered the effect on the Act's constitutionality of section 3703 which permits fundraising by and for law-enforcement personnel

outcome of the present litigation since the version of the law now under attack differs from that at issue there.

## II. UNCONSTITUTIONAL OVERBREADTH

The plaintiffs contend that section 3702-A is impermissibly overbroad because it prohibits entirely a class of protected speech -- the plaintiffs' solicitations -- without advancing a substantial governmental interest by the least restrictive means available. Complaint & 42.

A statute may be overbroad ``if in its reach it prohibits constitutionally protected conduct." *Grayned v. City of Rockford*, 408 U.S. 104, 114 (1972). Normally, such overbreadth in the application of the law must be substantial in order to warrant a finding of unconstitutionality. *New York v. Ferber*, 458 U.S. 747, 768-69 (1982). However, the Supreme Court has established that a statute may be held overbroad on its face if ``in all its applications [it] directly restricts protected First Amendment activity and does not employ means narrowly tailored to serve a compelling governmental interest." *Secretary of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 965-66 n.13 (1984) (``It was on [this] basis . . . that the Court in *[Village of] Schaumburg [v. Citizens for a Better Env't*, 444 U.S. 620, *reh'g denied*, 445 U.S. 972 (1980)] struck down the Village ordinance as unconstitutional"). To be narrowly tailored the State's method must be the least restrictive means available. *Sable Communications of Cal., Inc. v. Federal Communications Comm'n*, 492 U.S. 115, 126 (1989).

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campaigning for public office.

It is well recognized that ``charitable solicitations `involve a variety of speech interests . . . that are within the protection of the First Amendment,' and therefore have not been dealt with as `purely commercial speech.'" *Riley v. National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 788 (1988) (quoting *Village of Schaumburg*, 444 U.S. at 632). Consequently, section 3702-A, which directly restricts protected First Amendment activity, is subject to ``exacting First Amendment scrutiny." *Id.* at 789.

The State asserts that it has a compelling interest in prohibiting all solicitation that tangibly benefits law-enforcement personnel because such solicitation is inherently coercive. Defendant's Memorandum at 16; Defendant Attorney General Michael E. Carpenter's Reply Memorandum in Support of His Request for Judgment on the Stipulated Record at 4; P.L. 1991, ch. 510, ' 5 (Legislative intent).[5] Indeed, Maine has a compelling interest in preserving the appearance of integrity

[5] The Legislature set forth its rationale for enacting section 3702-A in a statement of purpose. The statement reads in pertinent part as follows:

> This Act clarifies and reaffirms that the primary and compelling purpose underlying the laws governing solicitation by law enforcement officers is to eliminate the coercion that is inherent in solicitations by and on behalf of law enforcement officers by prohibiting such solicitations. . . . In addition to the effect on the prospective donor, the appearance of the transaction to 3rd persons may undermine public confidence in the integrity of the public office. At least the appearance of coercion inheres in every solicitation that tangibly benefits law enforcement agents and the appearance undermines the integrity of the office. The Legislature finds that the State has a compelling interest in preserving the integrity of law enforcement officers and finds that regulating all law enforcement solicitations that tangibly benefit law enforcement is necessary to promote this compelling state interest. . . . The Legislature further finds that solicitations for charitable purposes unrelated to law enforcement activities are not inherently coercive because the person solicited will know that law enforcement agencies or officers do not gain any tangible benefit and, consequently, will not be concerned with who donates.

of its law-enforcement personnel; by prohibiting behavior that is or may be viewed as coercive it can be said that the Legislature furthers that interest.

The State's assertion notwithstanding, it continues to except from its ban solicitation by or on behalf of law-enforcement officers campaigning for election to public office. *See* 25 M.R.S.A. ' 3703. In doing so, the State undermines the very premise on which the key provision of the Act is grounded -- that the appearance of coercion inheres in every solicitation that tangibly benefits law-enforcement personnel -- and effectively admits that even its present ban sweeps too broadly. *See Auburn Police I,* 756 F. Supp. at 618.

Moreover, in an effort to circumscribe the appearance of coercion the Legislature has also failed to narrowly draw its statute to accomplish its stated purpose by the least restrictive means available. The broad sweep of section 3702-A prohibits, among other things, the sale of the plaintiffs' publications such as the magazine *Maine State Trooper*, *see* attachment to Stipulated Facts & 25, in stores or through vending machines. Fundraising for, say, the policemen's ball through the placement of unattended change buckets with an accompanying explanatory display on store checkout counters or in movie theatre lobbies would be prohibited. These are but a few examples of revenue-raising methods for projects tangibly benefiting law-enforcement personnel that are free of even the appearance of coercion because citizens would understand that the elements of coercion -- the pressure of personal contact, the perception that law-enforcement personnel are aware of who gives and who does not and the attendant expectation that failure to give may yield a negative consequence or that a contribution may produce some special treatment -- are absent.[6] Additionally, as the plaintiffs

[6] The plaintiffs offer other examples of solicitation that they believe do not appear coercive. One example involves solicitation by third-party professionals on behalf of law-enforcement personnel who assure those solicited that they are not law-enforcement officers and that the names of those solicited will never be revealed to law enforcement. Plaintiffs' Memorandum Brief in Support of Their Motion

argue, solicitation of law-enforcement personnel by or on behalf of other law-enforcement personnel -- which is also banned -- does not logically raise a concern about the appearance of coercion of the kind that undermines public confidence in our law-enforcement institutions. *See* Plaintiffs' Memorandum Brief in Support of Their Motion for Summary Judgment (``Plaintiffs' Memorandum") at 31.

By asserting without any supporting empirical evidence[7] that *any* solicitation that tangibly benefits law-enforcement personnel is inherently coercive, the State

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for Summary Judgment at 22-24. The State would be legitimately wary of such a scenario because it requires an element of public trust in the individuals hired for professional solicitation that may not be warranted, especially in the case of direct solicitation by telephone, or door-to-door. Citizens might reasonably perceive coercion when directly solicited by someone they do not know who claims to represent law enforcement and who promises anonymity. They may not feel that they can trust such assertions and, thus, would be constrained to act out of fear, not freedom.

[7] The Supreme Court rejected the state of Illinois' assertions in *Peel v. Attorney Registration & Disciplinary Comm'n of Ill.*, 110 S. Ct. 2281, 2291 (1990), that, even though it was ``[l]acking empirical evidence to support its claim," the Illinois Supreme Court's inherent authority to ``supervise its own bar" required the Supreme Court to defer to the state court in determining whether specific statements were protected by the First Amendment. The Court noted that the fact that the state supreme court is exercising its power to review the actions of the state bar commission ``does not insulate it from our review for constitutional infirmity." *Id.* at 2292 (citations omitted). Here, the state of Maine provides no empirical data whatsoever and simply asserts that the court must deferentially accept at face value the Legislature's finding that the appearance of coercion inheres in all solicitation

> has taken the *effect* of the statute and posited that effect as the State's interest. If accepted, this sort of circular defense can sidestep judicial review of almost any statute, because it makes all statutes look narrowly tailored. . . . ``Every content-based discrimination could be upheld by simply observing that the state is anxious to regulate the designated category of speech."

*Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.*, 60 U.S.L.W. 4029, 4033 (U.S. Dec. 10, 1991) (quoting *Simon & Schuster, Inc. v. Fischetti*, 916 F.2d 777, 785 (2d Cir. 1990) (Newman, J., dissenting)) (emphasis in original).

Further, the plaintiffs point out that by limiting its proscription to solicitation that tangibly benefits law-enforcement personnel the State has effectively carved out a new exception, namely all solicitation that does not confer such a benefit. In doing so, the State makes a constitutionally unsupportable distinction based on the false premise that coercion, or the appearance thereof, depends on who is benefited from law-enforcement solicitation rather than on who solicits and in what manner. When solicitation is conducted by or for law-enforcement personnel, it matters not whether the property solicited will tangibly benefit them. As the plaintiffs argue, ``How is it less coercive for a policeman to solicit on behalf of Special Olympics than for a policeman to solicit on behalf of the family [of] a fellow officer wounded in the line of duty?" *See* Plaintiffs' Memorandum at 22.

The likelihood of coercion inheres, if at all, in the fact that law-enforcement personnel care enough about a particular project to take it on as their own. In doing so, they communicate to the public an interest that is virtually indistinguishable from one that confers a tangible benefit on such personnel. When a policeman or police union solicits funds for a worthy cause, such as Special Olympics, the average citizen has as much reason to be concerned about the consequences of his response as when he is solicited to purchase an advertisement in the *Maine State Trooper*. The

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benefiting law-enforcement personnel. *Peel* makes clear that this is not so.

blanket exception in section 3702-A for solicitation that does not tangibly benefit law-enforcement personnel renders the regulatory scheme underinclusive and thereby undermines the legitimacy of the scope of the prohibition. *See Simon & Schuster, Inc.*, 60 U.S.L.W. at 4034 (Blackmun, J., concurring).

In *Auburn Police I* the State was admonished that, ``[t]o resurrect its statute, [it] must isolate the elements of police solicitation that produce coercion and then tailor its statute to root them out evenhandedly." *Auburn Police I*, 756 F. Supp. at 618. This the State has not done. All forms of the plaintiffs' charitable solicitations are protected speech. The present statute prohibits many of them without identifying articulable characteristics that are a suitable proxy for the appearance of coercion. I find that a complete prohibition of solicitation limited to that which tangibly benefits law-enforcement personnel is not narrowly tailored to Maine's evident interest in banning solicitation that is inherently coercive, and therefore section 3702-A is, like its predecessor, unconstitutionally overbroad and invalid on its face.

## III. PRIOR RESTRAINT

As in *Auburn Police I*, the plaintiffs contend that the Act constitutes an impermissible prior restraint because it prohibits them from exercising their constitutionally protected right of charitable solicitation, Complaint && 35, 37, 39, and thereby undermines their financial ability to publish protected speech, Complaint && 36-39.

The Supreme Court has held that ``[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963) (citations omitted). The Court has specifically noted that the doctrine of prior restraint applies to the act of charitable solicitation. *Munson*, 467 U.S. at 968-69. Several lower courts

have struck down schemes for licensing solicitors for charity and for screening their messages or proscribing them. *See Famine Relief Fund v. West Virginia*, 905 F.2d 747, 753 (4th Cir. 1990); *Telco Communications, Inc. v. Carbaugh*, 885 F.2d 1225, 1232-34 (4th Cir. 1989), *cert. denied*, 11 S. Ct. 1923 (1990); *Telco Communications, Inc. v. Barry*, 731 F. Supp. 670, 682-83 (D.N.J. 1990). *See also Auburn Police I*, 756 F. Supp. at 618-19. Maine's revised Act constitutes a prior restraint. It ``silences by fiat an entire category of charitable solicitation. It is in this respect a form of censorship; it prejudges rather than punishes after the fact." *Id.* at 618. For the reasons articulated above in connection with the overbreadth analysis, I remain convinced that the State's legitimate interest in protecting against coercive law-enforcement solicitation is not great enough to justify such prior restraint.

## IV. EQUAL PROTECTION

The State's distinction between solicitation for law-enforcement officers running for public office, on the one hand, and all other law-enforcement solicitation, on the other, offends the plaintiffs' Fourteenth Amendment right to equal protection of the laws. ``A state must demonstrate a substantial governmental interest for discrimination that implicates First Amendment rights." *Auburn Police I*, 756 F. Supp. at 619 (citing *Police Dep't of the City of Chicago v. Mosley*, 408 U.S. 92, 98-99 (1972)). While the State certainly has an interest in not hampering law-enforcement personnel from running for public office in circumstances where they are not otherwise legitimately restricted from doing so, it can demonstrate no substantial basis for discriminating between this tangible benefit to law enforcement, which it permits, and all other tangible benefits to law enforcement, which it prohibits. Solicitation to advance the election of law-enforcement personnel is no less inherently coercive nor more worthy than other causes for which solicitation tangibly benefiting such personnel might be

conducted. *Cf. Mosley*, 408 U.S. at 100 (peaceful non-labor picketing no more disruptive than peaceful labor picketing). Consistent with its earlier effort, ``The State has impermissibly chosen among causes for which it will lift its heavy burden on free-speech interests." *Auburn Police I*, 756 F. Supp. at 619 (citing *id.* at 97-98).

## V. RELIEF

The plaintiffs seek, *see* Complaint, section IX, and should be granted, declaratory and injunctive relief and attorney fees. ``Declaratory relief is a matter of discretion . . . [and] is appropriate when it will `serve a useful purpose in clarifying the legal relations in issue' or `terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" *Auburn Police I*, 756 F. Supp. at 619 (quoting *President v. Vance*, 627 F.2d 353, 364 n.76 (D.C. Cir. 1980)) (citations omitted). The plaintiffs as well as other parties whose activities are encompassed by the Act are best served by a declaration of the status of the law.

In order to be entitled to a permanent injunction, the plaintiffs must (1) demonstrate that they have been directly injured or are in immediate danger of being directly injured by the challenged conduct, (2) show that the conduct has continuing impact into the future or there is a likelihood that the defendant will engage in that conduct in the future and (3) establish that they are subject to ``continuing irreparable injury for which there is no adequate remedy at law." *Lopez v. Garriga*, 917 F.2d 63, 67-68 (1st Cir. 1990). The stipulated facts make plain that the plaintiffs have already been directly injured by the Act in that publishers of their magazines will not assist them in solicitation because of the threat of its enforcement, Stipulated Facts & 17, which adversely affects both the law-enforcement associations and the publishers. The plaintiffs present uncontroverted testimony that the Act would severely damage their ability to fund their speech activities, including the publication of their

trade magazines. Affidavit of Plaintiff Auburn Police Union & 5 (Exh. C to Stipulated Facts); Affidavit of Plaintiff Portland Police Benevolent Association & 5 (Exh. D to Stipulated Facts). Although the plaintiffs have successfully attacked the Act's constitutionality on the basis that it impermissibly limits their speech activities, a permanent injunction is appropriate to ensure that the plaintiffs and other parties to which the Act applies are not chilled from soliciting for fear of enforcement, as are the magazine publishers. The last criteria is met because ``money damages cannot adequately compensate for the impermissible burden on the plaintiffs' freedom of expression." *Auburn Police I*, 756 F. Supp. at 619.

The plaintiffs should also be awarded attorney fees under 42 U.S.C. ' 1988. ``[I]t is well-established that a court may not deny an award of attorney's fees to a prevailing civil rights plaintiff in the absence of special circumstances rendering the award unjust . . . ." *De Jesus v. Banco Popular de Puerto Rico*, 918 F.2d 232, 234 (1st Cir. 1990) (citation omitted). No special circumstances have been raised or are evident in the record to warrant denial of the plaintiffs' request for attorney fees.

## VI. CONCLUSION

For the foregoing reasons, I recommend that the court ***GRANT*** the plaintiffs' motion, and ***DENY*** the defendant's motion, for judgment on the basis of a stipulated written record. The court should permanently enjoin enforcement of 25 M.R.S.A. ' 3702-A, declaring it unconstitutional on grounds that it is facially overbroad, operates as an impermissible prior restraint and violates the plaintiffs' right to equal protection of the laws. Finally, I recommend that attorney fees be awarded to plaintiffs pursuant to 42 U.S.C. ' 1988.

### *NOTICE*

***A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days***

*after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.*

*Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.*

*Dated at Portland, Maine this 30th day of January, 1992*

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*David M. Cohen*
*United States Magistrate Judge*